



COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Extend Collection

3038-0024: Regulations and Forms Pertaining to the Financial Integrity of the Marketplace

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the existing collection of information pertaining to regulatory obligations for financial reporting and recordkeeping by various Commission registrants including swap dealers, futures commission merchants, introducing brokers and retail foreign exchange dealers.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by “OMB Control No. 3038-0024” by any of the following methods:

- The Agency’s website, at <https://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

- *Hand Delivery/Courier*: Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Jennifer Bauer, Special Counsel, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418-5472; email: jbauer@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed extension of the existing collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.¹

Title: Regulations and Forms Pertaining to the Financial Integrity of the Marketplace (OMB Control No. 3038-0024). This is a request for an extension of a currently approved information collection.

¹The OMB control numbers for the CFTC regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981).

Abstract: The Commission is the independent federal regulatory agency charged with providing various forms of customer protection so that users of the commodity markets can be assured of the financial integrity of the markets and the intermediaries that they employ in their trading activities. Part 1 of the Commission's regulations requires, among other things, that commodity brokers --known as futures commission merchants ("FCMs"), or Introducing Brokers ("IBs"), comply with certain minimum financial requirements. In order to monitor compliance with these financial standards, the Commission has required FCMs and IBs to file financial reports with the Commission and with the designated self-regulatory organization of which they are members as well as to report to the Commission should certain financial requirements drop below prescribed minimums.

In 2008, the US Congress passed the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651, 2189-2204 (2008), also known as the Farm Bill. The Farm Bill provided the Commission with new authority with regard to the regulation of off-exchange retail forex transactions. Among other things, it directed the Commission to draft rules effectuating registration provisions for a new category of registrant --the retail foreign exchange dealer ("RFED"). Under the terms of the legislation, RFEDs are subject to the same capital requirements as FCMs that are engaged in retail forex transactions, and, therefore, subject to the same reporting requirements. Accordingly, this collection was amended to reflect the financial reporting requirements of the new category of registrant, RFEDs.

In 2010, the US Congress passed the Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1376 (2010), giving the Commission the authority to regulate certain swap markets and participants in those markets. Section 731 of the Dodd-Frank Act, amended the Commodity Exchange Act ("CEA"), 7 U.S.C. 1 *et seq.*, to add, as section 4s(e) thereof, provisions concerning

the setting of capital and initial and variation margin requirements for swap dealers (“SDs”) and major swap participants (“MSPs”). In 2016 and 2020 respectively, the Commission finalized the Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants rule and the Capital Requirements for Swap Dealers and Major Swap Participants rule to implement those requirements. Specifically, such rules include financial reporting and recordkeeping, as well as application processes for model approval for both capital and margin models for SDs and MSPs that do not have a prudential regulator (“Covered Swap Entities” or “CSEs”).

Separately, in 2013, the Commission finalized rules in an effort to prevent unauthorized usage of customer funds by FCMs and RFEDs. The final rules included modifications to the reporting requirements required by the Commission which resulted in changes to the financial statements filed by FCMs and RFEDs, and made some of the recordkeeping requirements already contained in this OMB Collection Number 3038-0024 into reporting requirements. These rules added additional recordkeeping requirements by FCMs to assure the segregation of customer funds.

This collection, OMB Control No. 3038-0024, is needed for the Commission to continue its financial monitoring of its registrants. The burden hours are being revised to reflect the current number of various types of registrants and updated to reflect more accurate estimates regarding the number of financial reports filed, based on current historical data.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish for the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in §145.9 of the Commission Regulations.²

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection for approximately 61 FCMs and RFEDs, 53 CSEs and 1,019 IBs. The respondent burden for this collection is estimated to be as follows:

² 17 CFR 145.9.

Respondents/Affected Entities: FCMs, RFEDs, IBs, SDs, and MSPs.

Estimated Number of Respondents: 1,133.

Estimated Average Burden Hours Per Respondent: 251 hours³

Estimated Total Annual Burden Hours: 284,124 hours⁴

Frequency of Collection: At various intervals.⁵

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 25, 2022

Robert Sidman,

Deputy Secretary of the Commission.

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³ Rounded off from 250.7714033.

⁴ This figure is derived from 250.7714033 (burden hours per respondent) x 1133 respondents = 284,124.

⁵ For example, FCMs have both daily and monthly financial reporting obligations, annual certified financial and compliance report obligations, and periodic notice requirements.